Agenda Date: 7/25/03
Agenda Item: 2B

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
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ENERGY

IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR REVIEW AND APPROVAL OF AN INCREASE IN AND ADJUSTMENTS TO ITS UNBUNDLED RATES AND CHARGES FOR ELECTRIC SERVICE, AND FOR APPROVAL OF OTHER PROPOSED TARIFF REVISIONS IN CONNECTION THEREWITH	)	SUMMARY ORDER DOCKET NO. ER02080506
IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR REVIEW AND APPROVAL OF ITS DEFERRED BALANCES RELATING TO THE MARKET TRANSITION CHARGE AND SOCIETAL BENEFITS CHARGE	)	DOCKET NO. ER02080507
IN THE MATTER OF THE CONSUMER EDUCATION PROGRAM ON ELECTRIC RATE DISCOUNTS AND ENERGY COMPETITION - JERSEY CENTRAL POWER & LIGHT COMPANY'S VERIFIED PETITION FOR DECLARATORY RULING	)	DOCKET NO. EO02070417
IN THE MATTER OF THE VERIFIED PETITION OF JERSEY CENTRAL POWER & LIGHT COMPANY FOR REVIEW AND APPROVAL OF COSTS INCURRED FOR ENVIRONMENTAL REMEDIATION OF MANUFACTURED GAS PLANT SITES AND FOR AN INCREASE IN THE REMEDIATION ADJUSTMENT CLAUSE OF ITS FILED TARIFF IN CONNECTION THEREWITH	)	DOCKET NO. ER02030173

IN THE MATTER OF JERSEY CENTRAL)
POWER & LIGHT COMPANY FOR INCREASES)
IN ITS LEVELIZED ENERGY ADJUSTMENT)
CLAUSE CHARGE AND DEMAND SIDE FACTOR) DOCKET NO. ER95120633

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Summary Order memorializes, in summary fashion, the action taken by the Board of Public Utilities ("Board" or "BPU") in these matters at its July 25, 2003 public agenda meeting by a vote of five Commissioners. This Summary Order is being issued for the purpose of implementing new rates on August 1, 2003, consistent with the requirements of the Electric Discount and Energy Competition Act ("EDECA"), N.J.S.A. 48:3-49 et seq., and the Board's Orders implementing EDECA. The Board will issue a more detailed Final Decision and Order in these matters, which will provide a fuller discussion of the issues as well as the reasoning for the Board's determinations.

This Order resolves the five above-captioned petitions filed by Jersey Central Power & Light Company ("JCP&L" or "Company"). These include:

1) BPU Docket No. ER02030173, filed on March 13, 2002, seeking a review and a change of rates in the Company's Remediation Adjustment Clause for the period of January 1, 1996 through July 31, 2003 ("RAC case");

2) BPU Dkt. No. EO02070417, filed on July 17, 2002, seeking a declaratory ruling by the Board concerning the prudency and recoverability in customer rates of the costs, plus interest, incurred in the Company's Consumer Education Program through July 31, 2002 ("CED case");

3) BPU Dkt No. ER02080506, filed on August 1, 2002, seeking changes to JCP&L's unbundled rate schedules ("base rate case"). This petition was filed in response to the Board's directive in its March 7, 2001 Final Decision and Order resolving JCP&L's Restructuring, Stranded Costs and Unbundled Rates filings. *I/M/O/ Jersey Central Power and Light Company d/b/a/ GPU Energy – Rate Unbundling, Stranded Costs and Restructuring Filings*, BPU Dkt. Nos. EO97070458, EO97070459, and EO97070460 ("Final Restructuring Order");

4) BPU Dkt. No. ER02080507, filed on August 1, 2002, seeking the resetting and recovery of its deferred Market Transition Charge ("MTC"), Societal Benefits Charge ("SBC") as well as its above-market Non-Utility Generation ("NUG") costs ("deferred balances case"); and

5) BPU Dkt. No. ER95120633, concerning the prudency of JCP&L's buyout of its Power Purchase Agreement ("PPA") with Freehold Cogeneration Associates, L.P. ("the Freehold buyout case").

With respect to this fifth item, at its March 20, 2003 public agenda meeting, the Board voted to recall the issue of the prudency of the Freehold buyout from JCP&L's deferred balance case for direct hearing and disposition by the Board. On July 24, 2003, the parties to that proceeding, JCP&L, Board Staff ("Staff"), the Ratepayer Advocate ("RPA") and the Independent Energy Producers of New Jersey ("IEPNJ"), executed a Stipulation agreeing that the $135 million cost of the Freehold buyout, which had been previously authorized by the Board on an interim basis, subject to further review and refund, and which has already been fully recovered from JCP&L ratepayers, was reasonable and should be considered final with no further adjustment. Based on its review of the record, the Board HEREBY APPROVES the Stipulation of the parties on this issue as a full and final settlement of this matter.

JCP&L filed a motion to consolidate the first four petitions with the Board on August 1, 2002. These petitions collectively request Board approval of JCP&L's proposed overall increases and/or other adjustments to JCP&L's various unbundled tariff rates and charges for electric service. The consolidated petitions also request approval of JCP&L's proposed tariff charges and revisions to become effective for service rendered on and after August 1, 2003. These petitions were transmitted to the Office of Administrative Law ("OAL"), and assigned to Administrative Law Judge ("ALJ") Irene Jones.

Additionally, pursuant to the Board's Order dated July 22, 2002, *Order Directing the Filing of Supplemental Testimony and Instituting Proceedings to Consider Audits of Utility Deferrals*, Dkt. No. ER02050303, *et al*., an audit was performed on JCP&L's deferred balances, the results of which were placed in the record of the deferred balances case at the OAL.

These four matters now come before the Board on a record developed in hearings before the ALJ.

On July 2, 2003, the ALJ issued an Initial Decision adopting the terms of a Stipulation of Settlement executed by all the parties to the Remediation Adjustment Clause case, which included the Company, Staff and the RPA. The Board, having reviewed the record in this proceeding as well as the Initial Decision of the ALJ in the RAC case, FINDS the Stipulation of Settlement to be a just, reasonable and efficient resolution of this matter and, accordingly, HEREBY ADOPTS this Stipulation of Settlement and the Initial Decision as a full and final resolution of the RAC case.

Evidentiary hearings in the base rate and deferred balances cases were held on various dates before ALJ Jones. The parties to these two proceedings include the Company, Staff, the RPA, and several interveners and participants. Intervener status was granted to Co-Steel Raritan, Inc., which after a merger became Gerdau Ameristeel Perth Amboy, Inc. ("Gerdau"), the New Jersey Commercial Users ("NJCU"), New Jersey Transit Corporation ("NJT"), IEPNJ, and the Department of Defense/other Federal Executive Agencies ("DOD"). Participant status was granted to Public Service Electric and Gas Company ("PSE&G"), PP&L Energy Plus, LLC, Green Mountain Energy Company and Rockland Electric Company. Initial and Reply Briefs were filed.

On July 2, 2003, the ALJ issued a separate Initial Decision, adopting a proposed Settlement ("proposed Settlement") executed by some of the parties to the Company's base rate, deferred balances and CED cases. The signatories to the proposed Settlement included the Company, NJCU, NJT, Gerdau, IEPNJ and the DOD. Significantly, neither the Staff nor the RPA participated in the negotiations which led to this proposed Settlement. Exceptions to the Initial Decision were filed by Staff and the RPA. Comments in support of the proposed Settlement were submitted by the Company. Reply Exceptions were submitted by the RPA and various signatories to the proposed Settlement. Based on its review of the record, including the Exceptions and Replies to Exceptions, the Board FINDS the proposed Settlement in these cases and the Initial Decision approving same to be unreasonable and unacceptable, in that they do not adequately balance the competing interests in this case. Accordingly, the Board HEREBY REJECTS the Initial Decision and the proposed Settlement adopted therein.

Having rejected the Initial Decision and the underlying proposed Settlement, the Board will individually address the various outstanding issues in these proceedings. As will be discussed herein, and as will be more fully explained in a Final Decision and Order that will be issued in this matter, generally, except as specifically modified herein, the Board is of the view that the recommendations set forth in Staff's Initial and Reply Briefs provide reasonable and sound basis for resolution of the outstanding issues in these proceedings. Accordingly, for the reasons described in Staff's briefs, and summarily set forth below, and which will be more fully set forth in a Final Decision and order to be issued in this matter, the Board HEREBY FINDS and ORDERS as follows:

A. Base Rate Case

1. Rate Base

a. Cash Working Capital. Consistent with, and for the reasons described in Staff's position as set forth in its Initial Brief, the Board HEREBY FINDS that the lead/lag study should: (1) include depreciation and amortization expenses, as well as regulatory debits and credits, with an assigned zero lag; (2) exclude deferred taxes and tax credits; and (3) include the return on invested capital with an assigned zero lag.

b. Consolidated Taxes. The Company made no adjustment related to the benefits of filing a consolidated return, which allows JCP&L's parent company to gain immediate benefits from offsetting losses of affiliates with taxable losses, with gains from affiliates with positive taxable income, such as JCP&L. Both Staff and the RPA proposed such adjustments, with the RPA making its calculation on a year-by-year basis, and totaling the results from each year. Staff calculated an adjustment over the entire period. Staff's position allows affiliates with taxable incomes in some years and taxable losses in others to take full advantage of their own losses to the extent that they have sufficient positive income in other years. Consistent with applicable law and prior Board policy, the Board FINDS that a consolidated tax adjustment is appropriate in this case and HEREBY ADOPTS the Staff's adjustment as described and for the reasons set forth in its briefs.

2. Operating Income

a. Customer Growth. Consistent with prior Board decisions, both Staff and the RPA take customer growth into account in calculating their weather normalization adjustment for JCP&L. Conversely, JCP&L does not account for any growth in the number of customers in its weather normalization adjustment. The Board HEREBY FINDS that in order to properly match revenues with the use of test-year end rate base and annualized depreciation expenses based on year-end plant, revenues should reflect customer growth. Accordingly, the Board HEREBY ADOPTS the recommendations of Staff and the RPA that an adjustment for customer growth to residential and small commercial customers be made based on growth rates of 0.6% and 0.9%, respectively, over the average number of customers at year's end. This results in a $2,255,000 adjustment for Residential customers and a $2,429,000 adjustment for General Service Secondary customers, for a total annualization adjustment of $4,684,000 to test year revenues.

b. Clean Energy Program (formerly Comprehensive Resource Analysis) Lost Revenue Annualization. The Company claims that in the absence of an annualization adjustment for the 2002 lost revenues, pro-forma revenues are and will continue to be overstated. As an alternative, the Company seeks to have the Board determine in this proceeding that, upon the Board's determination of the appropriate measurement and verification protocols, the amount of such incremental lost revenues for the test year (and for each subsequent year until the new rates are again reset) should be calculated and added, without additional proceedings, to the Demand Side Adjustment Factor Clause deferred balance for future recovery. The Board HEREBY FINDS that until it has made a final decision regarding the appropriate protocols for determination of lost revenues, this adjustment is inappropriate. JCP&L shall be permitted the same treatment of Clean Energy Program lost revenues as was recently approved by the Board in PSE&G's base rate case, dated July 31, 2003**,** Dkt. Nos. ER02050303, *et al*.

c. Charitable Contributions. The Company asserts that it is entitled to recover, from its ratepayers, the expenses associated with the contributions made by it to various charities. The Company argues that recovery of these contributions is consistent with the interests of its customers and the communities in which they live. The Company also contends that the recent opinion of the New Jersey Supreme Court regarding utility recovery of charitable contributions does not constitute an automatic bar to recovery and that the Court's decision was only applicable to the Board's then policy on charitable contributions as specifically applied to the factual circumstances presented in that base rate proceeding. *I/M/O the Petition of New Jersey American Water Company, Inc. for an Increase in Rates for Water and Sewer Service and Other Tariff Modifications*, 169 *N.J.* 181 (July 25, 2001). The Board disagrees with the Company's analysis and believes that the positions of the RPA and Staff correctly reflect the mandate of the Court regarding utility recovery of charitable contributions. Accordingly, the Board HEREBY FINDS that all charitable contributions must be excluded from the Company's operating expenses.

d. Depreciation Expense. The Company is requesting a net depreciation expense annualization adjustment of $1,515,000 and total annualized depreciation expenses of $114,547,000. The Company maintains that it is complying with the terms of a June 27, 1996 stipulation ("Final Stipulation") approved by the Board, by updating the book depreciation rate computations annually for plant additions, retirement, transfers and adjustments and keeping the negative net salvage rate percentages and depreciation service lives consistent with the separate Stipulation of Settlement of Depreciation Rates, also dated June 27, 1996, which was also approved by the Board as part of the Final Stipulation. *I/M/O the Petitions of Jersey Central Power & Light Company for Approval of an Increase in its Levelized Energy Adjustment Charge, Demand Side Factor, Implementation of a Remediation Adjustment Clause (RAC) Other Tariff Changes, Recovery of Crown/Vista and Freehold Buyout Costs, Changes in Depreciation Rates, Settlement of Phase 1 of the Board's Generic Proceeding on the Recovery of NUG Capacity Payments*, Docket Nos. ER95120633, ER95120634, EM95110532, EX93060255, and EO95030398, (March 24, 1997). The Board HEREBY FINDS, consistent with the recommendations of the RPA and Staff, that the Company's inclusion of net negative salvage value in depreciation rates is inappropriate and instead, HEREBY ADOPTS utilization of a net salvage allowance of $4.8 million which is the cost of removal reflected in the Company's test-year budget for transmission, distribution and general plant. Accordingly, the Board HEREBY ADOPTS a depreciation expense in the amount of $77,146,000.

e. Management Audit Expense. JCP&L proposes a $142,000 increase to test year operating expenses of $687,000 for a total annual amortization expense of $829,000 related to recovery of Board ordered management audit consultant fees. The Company derives its $829,000 expense by applying a three year amortization of $1,557,000 in expenses for management audits during the years 1998 – 2002 and a four year amortization of $1,238,000 of expenses incurred for the restructuring management audit. The Board HEREBY FINDS that a four year amortization of the total audit expenses of $2,795,000 as recommended by Staff is more appropriate. This results in a total annual amortization expense for mandated management audits in the amount of $698,750.

f. Merger Costs. JCP&L proposes to recover $7,677,000 in test year costs related to the achievement of merger savings of $64.210 million and an additional $35,019,000 in merger related costs recorded in 2001 per applicable accounting regulations, but related to severance payments made in 2002. The Board agrees with the positions of Staff and the RPA that the Company's proposal would essentially build into rates $42,696,000 for merger related costs which would be decreasing into the future and essentially would provide for the recurrent recovery of costs by the Company that were primarily incurred on a one-time basis to effectuate merger savings. Additionally, it must be noted that the Board's Merger Order (Docket No. EM00110870, dated October 9, 2001) did not provide for deferred accounting of costs. Accordingly, the Board HEREBY REJECTS the Company's proposed treatment of merger related costs, including the referenced test year expenses, as well as those expenses recorded prior to the test year. The Board HEREBY AFFIRMS its Order in the Merger Proceeding as addressing all issues regarding the treatment of merger costs, which treatment should remain intact.

g. SAP Project Enterprise/Evolution Amortization of Expenses. This adjustment relates to the Company's (1) amortization of its $17,400,000 investment in the SAP software system (Project Enterprise) over its remaining life of three years ($5,800,000 per year); and (2) amortization of its $9,414,000 share of the cost of First Energy System's new core business software platform (Project Evolution) over three years for hardware costs and seven years for software and other costs, for a total amortization amounting to $1,697,000. These two items yield a total proposed amortization expense of $7,497,000. The Board HEREBY REJECTS the Company's proposed adjustment and HEREBY FINDS that, consistent with the positions expressed by the RPA and Staff in the record, First Energy's decision to implement a SAP system for its own companies constituted a merger-related decision. As noted by JCP&L's witness, Project Evolution came out as an updated, integrated approach for the new merged Company and was a part of the Company's attempt to integrate the First Energy accounting system with the GPU accounting system. As such, no additional cost recognition or rate recovery of Project Evolution is appropriate for the same reasons expressed in paragraph "f," supra. Accordingly, the Board HEREBY ORDERS a total annual SAP amortization expense in the amount of $5,800,000, based upon an expense reduction of $1,697,000 related to Project Evolution.

h. Rate Case Expenses. JCP&L projects total rate case expenses of $2,438,000 with a proposed amortization of three years for an annual expense of $783,000. The RPA estimates total rate case expenses of $2,000,000 but incorporates 50%/50% sharing and proposes an amortization of five years for an annual expense of $200,000. The Board HEREBY FINDS that JCP&L is entitled to recover $2,438,000 in rate case expenses, subject to 50%/50% sharing and a four year amortization, consistent with the recommendation of Staff and long standing Board policy. The Board agrees with Staff that a four year amortization will best provide for the Company to receive an appropriate level of rate case expenses. A four year amortization results in an annual rate case expense of $294,000.

i. Production-Related Amortizations. JCP&L proposes to change various previously approved amortization periods for certain utility assets to four year amortizations consistent with the length of the transition period. The Company maintains that these amortizations were approved at a time when JCP&L retained ownership interests in these facilities, and its investors received an appropriate return of and on their investment interest. As a result of the restructuring of the electric utility industry, the Company has divested itself of the regulatory assets in question. Now that these assets have been divested, the Company contends that the customers continue to receive indirect benefits from the facilities, but its investors receive no further return on the assets, or any other ownership benefit, from these divested facilities.

The Board HEREBY FINDS that, consistent with the positions of Staff and the RPA, altering the amortization for these assets in the manner recommended by JCP&L would be inappropriate, because doing so without re-evaluating the issues previously decided by the Board in the prior proceedings has the potential to upset the delicate balance struck by the Board in those prior decisions wherein the Board balanced the competing interests of ratepayers and shareholders. The Board FURTHER FINDS that in accordance with the positions of Staff, the RPA and the Company, Department of Energy Enrichment fees should be transferred from Basic Generation Service ("BGS") to base rates. Accordingly, the Board HEREBY ORDERS an amortization expense of $3,337,000.

j. Restructuring Transition Costs. JCP&L seeks to include an eight year amortization of 1996 extraordinary retirement and severance costs of $70.5 million ($62,900,000 for Voluntary Enhanced Retirement Program Cost, $3,200,000 for Bridged Retirement Benefits and $4,400,000 for Voluntary and Involuntary Severance payments), asserting such an amortization was allowed per the Board's Final Restructuring Order. The RPA contends that EDECA was signed in February 1999, over two years after these expenses were incurred and, thus, recovery of these expenses would constitute a retroactive adjustment that should be denied. However, the Board agrees with Staff and the Company that these costs are appropriate for recovery. In this regard, it must be noted that the Board began its review of the future structure of the energy industry prior to the enactment of EDECA and that the "Green Book," issued by the Board in 1997, specifically stated that any costs incurred as a result of utility down-sizing or reorganizations which are, in whole or in part related to industry restructuring, are appropriately addressed through base rates. Moreover, the Legislature made similar findings with respect to restructuring-related costs. Accordingly, the Board HEREBY FINDS that JCP&L be permitted to include $8,813,000 in test year operating expenses for the amortization of restructuring transition costs.

k. Incentive Compensation. JCP&L maintains that incentive compensation is necessary for any organization to attract and retain the best talent and seeks to include $8,059,000 of related expenses in its rates. The Company has several incentive plans, which include plans for management, professional, administrative and bargaining union employees. The RPA recommends excluding $4,818,000 of the Company's proposed incentive compensation expenses. It contends that shareholders should pay for the incentive plans where they are the primary beneficiaries of those plans. The RPA does not contest the inclusion of payments for strictly operational goals related to certain union regional goals, meter readers and customer service representatives. The RPA calculated these payments as $3,241,000. Staff adopted the position of the RPA. The Board HEREBY FINDS, for the reasons expressed by Staff in its briefs, that today's economic conditions do not justify passing the cost of incentive compensation through to ratepayers for programs that primarily benefit shareholders, especially when it is evident that many ratepayers, homeowners and businesses alike, are having difficulty paying their utility bills or otherwise remaining profitable. Accordingly, the

Board HEREBY ORDERS that $4,818,000 in incentive compensation expenses be excluded from JCP&L's test year operating expenses.

l. Miscellaneous Expenses. JCP&L seeks recognition of costs associated with community affairs, public relations and image advertising. However, by the Company's own admission, these costs were incurred, at least in significant part, in order to reintroduce the JCP&L name to customers and to emphasize the Company's commitment to reliable service. It is well established and long standing Board policy to exclude from a utility's revenue requirement costs incurred for public relations and image advertising. Moreover, ratepayers should not be required to pay JCP&L to publicize its commitment to meet its customer service obligations. Although in its Initial Brief, Staff distinguished the Company's bill inserts as informational advertising, appropriate for reflection in rates, the Board HEREBY FINDS that based upon its review of the samples of JCP&L bill inserts, print ads and radio scripts, all of these advertisements constituted "institutional" or "promotional" advertising primarily designed to enhance the goodwill, credibility, reputation, character or image of the Company or increase the demand for utility services, and thus not eligible for inclusion in base rates. Accordingly, the Board HEREBY FINDS that $958,000 should be disallowed from JCP&L's miscellaneous expenses as recommended by the RPA.

m. Interest Synchronization. The Board HEREBY FINDS that an adjustment must be made to synchronize the Federal Income Tax expense associated with rate base and the weighted cost of debt utilized to support rate base. This amount of this adjustment must be modified to reflect the Board's findings herein.

n. Gross Receipts and Franchise Tax Annuity Tax Amortization. The RPA, for the first time in its "12 & 0" updates, contends that this amortization expired in February 2003 and should be eliminated from rates. Staff supported this adjustment. The Company claims that this adjustment is contrary to the basis upon which this case had been presented and litigated by all parties. As the adjustment was only two months beyond the end of the test year, and the Board has allowed such post-test year adjustments up to six months beyond the test year, the Board HEREBY ADOPTS the Staff and the RPA's position on this issue.

3. Performance Standards

The Board has long had a concern with reliability in JCP&L's service territory. The Board has conducted and is currently conducting reviews and focused audits related to service problems. There have been a number of outages in recent summers, most notably in 1999 in Red Bank. *I/M/O the Proposal to Perform a Review and Investigation of New Jersey's Electric Utility Systems,* Dkt. No. EX99070483 and *I/M/O the Review and Investigation of New Jersey's Electric Utilities' System Reliability*, Dkt. No. EX99100763. In the record of the instant base rate case, the Ratepayer Advocate raised a number of concerns pertaining to service quality and reliability and made a series of proposals, including the establishment of performance standards. The Board itself has taken measures to increase service quality and reliability in JCP&L's service territory – for instance, an investigation is being performed on JCP&L's storm response in August 2002, *I/M/O Jersey Central Power and Light Company Storm Restoration Effort for the August 2, 2002 Outages,* Dkt. No. EX02120950 dated March 13, 2003.

In addition, as a result of the recent outage problems experienced over the July 4, 2003 weekend by JCP&L customers in the shore areas, the Board is reviewing an expedited action plan, including the appointment of a Special Reliability Master to oversee necessary reliability improvements in an expedited manner.

By Order dated July 16, 2003 in Dkt. No. EX03070503, this Board has directed the Company to take immediate action to address the problems it has experienced this summer. The Board further believes, however, that, as part of its decision in this case, it is appropriate that additional measures be taken to improve JCP&L's system-wide reliability. The Board therefore ORDERS a Phase II proceeding to review whether the Company is in compliance with current requirements and standards and to establish additional performance standards for JCP&L, which should include specified targets to improve JCP&L's reliability and service quality in the shore area, on both a short-term and long-term basis, as well as to improve service quality and reliability throughout JCP&L's entire service territory. Such improvements must be undertaken immediately by the Company in the most expedited and efficient manner. It is anticipated that the results of the current ongoing reviews and focused audits, including the review of the Special Reliability Master, will be merged with the Phase II proceeding.

The Board HEREBY APPROVES Staff's recommendation that the Company be ordered to segregate on its books all capital expenditures related to improvements of its system. Any such expenditures and projects undertaken by JCP&L to increase its system's reliability will be reviewed as part of the Phase II proceeding, to determine their prudency and reasonableness for rate recovery.

4. Rate of Return

There was a range in the record in this case for return on equity, with 12% requested by the Company, 9.75% recommended by Board Staff, and 9.5 % recommended by the RPA (with an additional 35 basis point adjustment to reflect an adjustment to the capital structure). Based on its review of the record, the Board HEREBY REJECTS the Company's proposal as unreasonable and FINDS that the positions of the RPA and the Staff represent a more appropriate range of reasonableness for return on equity, in light of current economic conditions. Moreover, in light of the service problems documented in the record, and in light of JCP&L's continuing problems in maintaining safe, adequate and proper service, and pending the Board's Phase II proceeding described above, the Board HEREBY ORDERS that the appropriate return on equity for JCP&L's shareholders be set at the low end of that range, 9.50%, which is the rate that had been recommended by the Ratepayer Advocate in the base rate case and is the lowest return on equity recommended in this proceeding. The Board ORDERS that this 9.5% return on equity be put into effect on an interim basis, and be reviewed as part of the Phase II proceeding. In the event that JCP&L can demonstrate that it has indeed improved its service quality and reliability, the Board will consider prospectively increasing the return on equity up to 9.75%, similar to the rate or return on equity that it has recently awarded the State's three other electric utilities. However, if as a result of the ongoing and Phase II investigations, it becomes apparent that current reliability standards and requirements have not been met, the Board reserves its rights to take further appropriate actions, including, but not limited to, reducing the return on equity to as low as 9.25%, from the date of this Order.

As a result of the First Energy merger and the purchase accounting associated therewith (and net of the write-off of $300 million of the Company's MTC/BGS deferred balance also associated with the merger), the Company's common equity ratio as of the end of the test year was 68.0%. After eliminating both adjustments for ratemaking purposes, as proposed by the Company in its Briefs, the ratio is reduced to 57.2%. Moreover, the proposed Settlement provides for a further reduction, to 54%. However, the Board views even that ratio to be excessive for an electric distribution company for the reasons set forth in Staff's Briefs in support of its recommended rate of return. Accordingly, the Board ACCEPTS Staff's proposed capital structure (a 46% common equity ratio) as being more representative and appropriate for an electric distribution company on a going forward basis.

After reflecting the 9.50% rate of return on common equity and Staff's recommended capital structure, the Board HEREBY DETERMINES that the Company's overall rate of return shall be 8.38%.

B. Deferred Balances Case

The Company's proposed Settlement, which was submitted to and adopted by the ALJ, proposes that, on an interim basis pending the Board's decision on the Company's securitization petition, the Company's MTC/BGS deferred balance be recovered at the rate of $67.0 million per year, exclusive of the 6% New Jersey Sales and Use Tax ("SUT"). This is based on the Company's most recent projection[1] of its MTC/BGS deferred balance ($618.0 million, as of July 31, 2003, the end of the four-year transition period approved by the Board for implementing the rate reductions, retail choice and other provisions of the EDECA), a 10-year amortization, an interest rate of 1.50%, no disallowances, and no deduction of accumulated deferred income taxes from the recoverable balance. In view of the disallowances recommended by the Auditors, Board Staff and the Ratepayer Advocate, as briefly summarized below, and the record evidence supporting these disallowances, the Board REJECTS the Company's position on this issue.

[1] The proposed Settlement indicates that the $618.0 million projection is based on actual data through March 2003. While the Company's most recent deferred balance report filed with the Board (by letter dated June 30, 2003) reflects actual data through May 2003, the balance projected as of July 31, 2003 remains unchanged at $618.0 million, including accrued interest of $40.7 million.

Based on a review of the Company's BGS procurement during the first three years of the transition period (the three years ended July 31, 2002), the recommended disallowances range from approximately $17 million to nearly $300 million:

	($ millions)		
	Auditors	RPA	Staff
BGS procurement	$11.7	$239.0	$152.5
NUG costs	5.6	59.5	0
Total	$17.3	$298.5	$152.5

The BGS disallowance proposed by the Auditors (Barrington-Wellesley Group, Inc, who examined the prudency of the Company's BGS procurement[2]) was based on an analysis of the Company's forward purchases for the months of June, July and August 2001, during which the Company was found to have deviated from its "fill strategy," that is, it assertedly failed to obtain the percentage of its BGS requirements it had planned to meet with forward contracts in these months. The Auditors' proposed disallowance of non-utility generator ("NUG") costs was based on the Company's alleged failure to aggressively mitigate the above-market costs of its power purchase agreements ("PPAs") with three relatively small NUG projects, Camden, Gloucester and Kenilworth, aggregating 50 Mw. In quantifying the NUG disallowance, the Auditors assumed the Company could have achieved savings equal to 10% of the PPA payments made to these projects during the transition period.

The Ratepayer Advocate's recommended BGS disallowance was based on a comparison of the Company's cost of energy purchases other than from NUGs and parting contracts with the purchasers of its divested generating units (about $46 per Mwh) to the cost of the equivalent energy purchases made by its Pennsylvania affiliates, Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec") (about $40 per Mwh for both). The RPA attributed the approximately 14% higher cost of the New Jersey purchases as compared to the Pennsylvania purchases to an inappropriate objective of the Company's computer model: minimizing the expected variation between BGS revenues and costs as opposed to minimizing BGS costs alone.

The RPA also found the Company's efforts in mitigating above-market NUG costs to have been much less aggressive than they should have been, maintaining that no significant savings from such mitigation had been achieved since 1997. Consequently the RPA recommended that the Board not allow the Company to collect interest on the balance of above-market NUG costs included in the MTC during the transition period, which interest the Advocate quantified at $59.5 million.

Staff found the cost of the Company's energy and capacity purchases obtained via a combination of forward contracts and residual PJM purchases excessive, as compared to buying all of the same energy and capacity from PJM. On the other hand, Staff found that the Company did reasonably well on its parting contracts, and offset the Company's

[2] Mitchell & Titus, LLP audited the Company's accounting for deferred costs.

relatively poor performance on its forward contracts with the savings estimated to have been achieved from its parting contracts as follows (in $ millions):

Excessive cost of energy and capacity purchases other than NUG and parting contract purchases, as compared to purchasing the same energy and capacity from PJM	$329.0
(Less): Estimated savings from parting contracts and the restructuring of the Bayonne NUG PPA:	
TMI-1 parting contract	(58.8)
Oyster Creek parting contract	(92.3)
Bayonne PPA restructuring	(25.4)
	$(176.5)
Recommended BGS deferred balance disallowance	$ 152.5

After reviewing the record evidence supporting the proposed disallowances, and in particular the reasons underlying Staff's proposed disallowance as set forth in its Briefs, and which will be set forth more fully in the Board's Final Order to be issued in these proceedings, the Board HEREBY FINDS Staff's proposed disallowance to be reasonable and appropriate and accordingly HEREBY DISALLOWS $152.5 million of the Company's combined MTC/BGS deferred balance, currently projected to be $618.0 million. Accordingly, the Board HEREBY AUTHORIZES the Company to recover a combined MTC/BGS deferred balance of $465.5 million, subject to a true-up to reflect 1) actual data through July 31, 2003; 2) the results of the Board-ordered Phase II Audit of the Company's deferred balances; 3) the reduced return on its fossil generating units accrued during the transition period, as set forth below; 4) a re-calculation of accrued interest to reflect these adjustments as well as the disallowances set forth above and the change in the interest calculation methodology set forth below.

Pending the Board's decision on the Company's securitization petition, the Board HEREBY APPROVES interim deferral recovery of $48.541 million per year, exclusive of the 6% New Jersey Sales and Use Tax. As recommended by Staff, this recovery is based on a10-year amortization of the recoverable balance, net of tax (after deducting accumulated deferred income taxes associated with the deferred costs from the balance) and an interest rate equal to the yield on one-year constant-maturity Treasury notes plus 30 basis points, determined herein to be 1.3%.[3]

While the Company accrued interest on its deferred balances during the transition period on a net of tax basis (that is, it deducted accumulated deferred income taxes associated with the deferred costs from the balance), it did not do so in calculating its proposed interim deferral recovery. As set forth above, the Board HEREBY DIRECTS that the interim deferral recovery shall also be calculated on a net of tax basis. Additionally, going forward (effective August 1, 2003), the rate to be used in accruing interest on SBC, MTC and BGS deferrals be the rate actually incurred on the Company's short-term debt (debt maturing in less than

[3] Based on the rate for the week ending June 27, 2003, as reported in the Federal Reserve Statistical Release dated July 1, 2003.

one year), or the rate on equivalent temporary cash investments if the Company has no short-term debt outstanding.[4] Finally, consistent with the method employed by Rockland Electric Company, interest shall be computed monthly and compounded annually (added to the balance on which interest is accrued annually).

With respect to the Company's Societal Benefits Charge, subject to the Auditors' Phase II Audit, the Board HEREBY ACCEPTS the Company's proposed changes in its charges for DSM, i.e., Clean Energy program costs (a reduction of $15.0 million), and Consumer Education costs (an increase of $5.6 million). The Company currently has not included any Universal Service Fund ("USF") costs in the SBC. However, pursuant to the Board's July 16, 2003 Order *I/M/O the Establishment of a Universal Service Fund Pursuant to Section 12 of the Electric Discount and Energy Competition Act of 1999*, BPU Dkt. No. EX0002009, the Board HEREBY AUTHORIZES the Company to include $22.0 million of such costs in the SBC. As to the nuclear decommissioning component of the SBC, the Board HEREBY ACCEPTS the Company's proposed revision in the annual provision for TMI-2 decommissioning, as well as the Company's proposed revision in the annual recovery of the unamortized balance of the contribution to TMI-1's decommissioning trust fund made in connection with the sale of that unit.

With respect to the recovery of a similar payment made in connection with the sale of Oyster Creek, the Board HEREBY DIRECTS the Company to reduce the annual recovery by approximately $3.3 million to reflect a reduction in carrying costs consistent with the rate of return allowed the Company in this proceeding, as set forth above. With respect to Saxton, a small experimental reactor located in Pennsylvania, since the record evidence demonstrates that New Jersey ratepayers have contributed more than their fair share of the cost of decommissioning this unit relative to the ratepayers of the Company's Pennsylvania affiliates, the Board HEREBY DISALLOWS the $0.6 million in annual funding claimed by the Company for this unit.

With respect to the MTC deferred balance, the Auditors found that in calculating the return component of the revenue requirement of the Company's fossil units prior to their divestiture, the Company employed a pre-tax rate of 14.6%, and that this rate was not authorized by a Board Order. Accordingly, the Board HEREBY DIRECTS the Company to re-compute this component of the revenue requirement of the fossil units (including Yards Creek and the Forked River combustion turbines) to reflect an after-tax overall rate of return of 9.5%, as set forth in the Board's Final Order in the Company's restructuring proceedings in reference to the stipulated reduction in the Company's distribution rates.[5]

In conclusion, this Summary Order adopts a base rate decrease of approximately $222.7 million or 11%. However, pursuant to EDECA, it also authorizes recovery of a deferred balance of $160.9 million pursuant to an interim 10-year amortization schedule related to deferrals incurred

[4] The Company's November 15, 2002 compliance filing made in connection with its proposal for providing Basic Generation Service beyond July 31, 2003, provided for a continuation of the interest rate approved by the Board for application to deferrals during the transition period (the rate on constant-maturity 7-year Treasury notes plus 60 basis points). This rate is accordingly modified in accordance with the Board's directive above.

[5] For this purpose, the methodology employed by Atlantic City Electric Company in calculating the return component of the revenue requirement of its to-be-divested units included in its MTC shall be employed.

during the four year Transition Period. In addition, pursuant to EDECA, two further adjustments to JCP&L's rates must be reflected herein to first, recognize actual BGS costs commencing August 1, 2003, which were previously approved by Board Order dated February 6, 2003, Docket No. EX01110754, and second to reflect the expiration of temporary rate discounts implemented pursuant to EDECA.

The net result of these adjustments is an overall increase in the fixed price customer revenues in the amount of approximately $82.8 million or 4.2%. The Board HEREBY APPROVES this overall increase to be effective for service rendered on or after August 1, 2003.

With regard to rate design, there were a variety of recommendations in the parties' filed positions. The Board HEREBY ADOPTS Staff's recommendation and approves the proposed allocation of $79.9 million as reflected in the Company's proposed Settlement with allocation of the additional revenue decreases set forth in this Summary Order to the different classes, across the board, based upon class proposed settlement distribution revenues. The reduction is apportioned based on each class's percentage of total settlement distribution revenues, excluding GTX, which receives its allocation under GT. For the lighting class, which under the Company's proposed Settlement position would have received a rate increase, the Board HEREBY ORDERS that the increase be limited to the overall percentage change to the RS class. For the deferral proceedings, the Board HEREBY ORDERS that the increases or decreases be reflected on a usage basis as well as each unbundled non-bypassable charge. For the following interveners who filed specific proposals as to themselves and were signatories to the Company's proposed Settlement, the Board HEREBY ORDERS the following:

> Gerdau Ameristeel Sayerville, Inc. – The Board HEREBY ADOPTS the proposed Settlement provisions for Gerdau, effective upon the expiration of Co-Steel's existing contract for service on April 1, 2004. Gerdau will be served as a Service Classification GT customer, subject to all provisions and charges provided for in Service Classification GT, except that (i) the Distribution Charge shall be $1.87 per kw (exclusive of SUT) based only on the actual maximum monthly 60 minute demand for the current billing period, whether on-peak or off-peak, (ii) the distribution KVAR and KWH charges shall not be applied, and (iii) an MTC credit of $.009844 per kwh, shall be applied to all kwh usage.
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> The United States Department of Defense/Other Executive Federal Agencies – The Board HEREBY ADOPTS the proposed Settlement provision for DOD which provides for a credit against distribution kw and kwh charges calculated to provide an overall reduction in charges to DOD customers that, in the aggregate for all such DOD customers, equals $3.367 million on an annual basis (excluding SUT), based on the such customers' 2002 usage, as compared to rates in effect on January 1, 2003, after taking into account the effect of both the lower charges for Service Classification GT and such credit.
>
> New Jersey Transit – The Board HEREBY ADOPTS the proposed Settlement provision to modify GT-Commuter Rail Service Special Provisions so that weekday hours of 5:00 p.m. to 8:00 p.m. shall be considered as off-peak hours for billing purposes. The Board FURTHER ORDERS the inclusion of the following language in the Commuter Rail Service Special Provision in the Tariff for Service Classification GT:

> Where traction power is supplied at high voltage (230kV) and such power is being provided during a limited period to supplant power normally supplied by another utility, that limited period shall be excluded for the purpose of determining billing demand.

The Board APPROVES the proposed Settlement provision to modify the demand (kW) charge component of the delivery charge to alleviate intra-class customer impact disparities for commercial and industrial customers. Moreover, service classification GST customers shall have an increase in the tariffed monthly customer charge of $11.54 and $16.47 (excluding SUT) for single-phase and three-phase, respectively. All other tariffed monthly customer charges shall remain unchanged.

With regard to Reconnection Charges and Service Charges, the Company proposes in its proposed Settlement to increase reconnection charges from $22.00 to $27.00 during normal business hours (8 a.m. to 4:30 p.m.), and from $54 to $70 at all other hours. The Board HEREBY REJECTS this proposal and HEREBY ORDERS that JCP&L maintain a flat reconnection fee of $22.00 for all hours of restoration for RS, RT, and RGT classes, and maintain the present rates for GS and GST classes of $22.00 and $54.00 during normal business hours and other hours, respectively. The Board FURTHER ORDERS that actual costs shall provide the basis for disconnection and reconnection services for General Service Primary (GP) and GT classes. The Board HEREBY REJECTS JCP&L's proposal to increase existing service charges during other than normal working hours of 8:00 a.m. to 4:30 p.m. Monday – Friday, to $70.00 for all customer classes and HEREBY ORDERS that the existing service charges of $54.00 for RS, RT, RGT, GS and GST be continued.

For the typical residential customer using 686 kwh per month during the winter and 952 kwh per month during the summer, the provisions of this Summary Order results in an average annual increase in rates of approximately 3.5% (from approximately $86.01 per month to approximately $89.07 per month).

Within five (5) days of the date of this Order, the Company is HEREBY DIRECTED to submit to the Board final revised tariff pages conforming to the terms and conditions of this Summary Order. The Company shall consult with Staff to assure the adequacy of the required submission.

Finally, consistent with the recommendation of Staff, the Board HEREBY DIRECTS the Company to file monthly reports with the Board that show, for each NUG project, the energy and capacity purchased (Mwh and Mw) the amount paid for the energy and capacity, the disposition of the energy and capacity, (i.e. whether it was sold in the wholesale power market or otherwise), the amount received from the sale of the energy and capacity, as well as the value of the energy if it were priced at the average monthly PJM LMP and capacity deficiency rates, and the value if it were priced at the rate payable for BGS supply obtained pursuant to the statewide auction.

With the substitution of “the units revenue requirement” for “the amount paid for energy and capacity,” the same information is also to be provided for Yards Creek and the Forked River combustion turbines. The first such report, providing data for the month of July 2003, will be due no later than 30 days from the date of this Order.

DATED: 8/1/03

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY